In this connection, it may be observed that if A elects to sue in tort for the assault, he cannot also recover for a breach of contract. Obviously one is inconsistent with the other. Nevertheless, the two recent devisions which have overthrown the older common-law rule and permitted an action for assault, are apparently inconsistent in allowing a further recovery for breach of contract.[10]

It would seem that at last the English courts, at least, are to give the equitable considerations their true weight, and that the rule in *Hurst v. Picture Theaters, Ltd.*, will supplant that of *Wood v. Leadbitter*. If this be so, it will no longer be necessary for the courts to adopt the convenient but misleading solution employed in the principal case.

S. F. D.

THE WEBB-KENYON ACT AND INTERSTATE COMMERCE

In a recent case,[1] the United States Supreme Court (Mr. Justice Holmes and Mr. Justice Van Devanter, dissenting)

conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail." Similarly Section 532 of the Connecticut General Statutes provides: "All courts which are vested with jurisdiction both in law and in equity may, to the full extent of their respective jurisdictions, administer legal and equitable rights and apply legal and equitable remedies, in favor of either party, in one and the same suit, so that legal and equitable rights of the parties may be enforced and protected in one action; but wherever there is any variance between the rules of equity and the rules of the common law, in reference to the same matter, the rules of equity shall prevail." It would be especially easy for a court under the above statutes or similar ones to hold that while B may have a right or claim to A's departure, his exercise of any force to bring this about would amount to an assault.

[10] *Hurst v. Picture Theatres, Ltd., supra; Barnswell v. National Amusement Co.* (1915) 23 D. L. R. 615. In speaking of the question of damages, in the former case Buckley, L. J., says: "The defendants had, I think, for value contracted that the plaintiff should see a certain spectacle from its commencement to its termination. They broke that contract, and it was a tort on their part to remove him. They committed an assault upon him in law." In the latter case, Martin, J. A., adopting the reasoning in *Hurst v. Picture Theatres, Ltd.*, says: "As regards damages, the amount awarded, $50, would not justify our interference, because while breach of contract would be inapplicable, yet the learned Judge has obviously considered that the plaintiff was entitled to something appreciable for the assault."

[1] *Clark Distilling Co. v. Western Md. Ry.* (1917) 242 U. S. 311, 37 Sup. Ct. Rep. 180.

upheld the constitutionality of the Webb-Kenyon Act[2] and finally settled a very much disputed question relating to the power of Congress to regulate interstate commerce. The court in its decision construed the Webb-Kenyon Act as prohibiting the transportation in interstate commerce of all liquor shipped into a state in violation of the law of the state. The law of West Virginia forbade the shipment of liquor into the state and the receipt and possession of liquor so transported, without regard to the use to which the liquor was to be put. It was, therefore, decided that the provisions of the law of the state were made applicable by the federal act.[3] The effect of the Webb-Kenyon Act is to remove the protection of the interstate commerce clause from traffic in intoxicating liquors in certain cases.

As early as 1827, the Supreme Court held that a state did not have the power to regulate and tax an importation from a foreign country while the article taxed remained in the original package.[4] Contrary to a *dictum* laid down in the above case, a state statute regulating original packages containing liquor was declared to be within the police power of the state.[5] *The License Cases,* however, were overruled in *Leisy v. Hardin,*[6] which was directly influenced by the earlier case of *Bowman v. Chicago R. R.*[7] The court held that not only had a state no power to forbid the importation of intoxicating liquors;[8] but it also lacked the power to subject such a legitimate article of commerce to state prohibition laws while it remained in the original package.[9] The effect of these decisions was to call into existence the

[2] "An act divesting intoxicating liquors of their interstate character in certain cases." It forbids the shipment or transportation of intoxicating liquors "from one State . . . into any other State, Territory, or District of the United States, . . . which is intended to be received, possessed, sold or in any manner used, either in the original package or otherwise, in violation of any law of such State, Territory, or District of the United States." 37 St. at L. 699, Act of Mar. 1, 1913.

[3] The Court thus overruled the case of *Van Winkle v. State* (1914) 27 Del. 578, which held that the Webb-Kenyon Act applied only when liquor shipped in interstate commerce was intended to be used in violation of the law of the state, and did not apply to liquor shipped for personal use.

[4] *Brown v. Maryland* (1827) 12 Wheat. (U. S.) 419.

[5] *License Cases* (1847) 5 How. (U. S.) 504.

[6] (1890) 135 U. S. 100.

[7] (1888) 125 U. S. 465.

[8] *Bowman v. Chicago R. R., supra.*

[9] *Leisy v. Hardin, supra.*

Wilson Act,[10] which provided that imported liquors shall, upon arrival in a state, fall within the category of domestic articles of a similar nature. Objections similar to those made to the constitutionality of the Webb-Kenyon Act were unavailing, and the case of *In re Rahrer*[11] declared the Wilson Act valid. However, later cases showed the limited application of the act, and in *Rhodes v. Iowa*,[12] the court decided that, although the Wilson Act removed an impediment to the enforcement of state laws in respect to imported packages in their original condition, yet the states did not have the power, by virtue of the Wilson Act, to pass laws preventing the importation of liquor from another state. To meet the situation created by the above and later cases, Congress finally enacted the Webb-Kenyon Act.

Many objections were urged against the constitutionality of the act. It was originally vetoed by President Taft on the grounds that the act operated to delegate power to the states, and that it lacked uniformity.[13] As early as 1851, the Supreme Court, in considering the constitutionality of pilotage laws enacted by the states, made the following classification:[14] "The power to regulate commerce embraces . . . . various subjects quite unlike in their nature; some imperatively demanding a uniform rule; . . . . and some, like the subject now in question, as imperatively demanding that diversity, which alone can meet the local necessities of navigation. Whatever subjects of this power are in their nature national, or admit only of one uniform system, or plan of regulation, may justly be said to be of such a nature as to require exclusive legislation by Congress." The court thus held that the mere grant to Congress of the power to regulate commerce did not deprive the states of the power to regulate pilots. It was this classification that influenced the court in *Bowman v. Chicago R. R.*, and *Leisy v. Hardin*. It was there said that intoxicating liquors were of such a nature as to require a uniform system among the states, and the power to pass such legislation was vested exclusively in Congress. It is interesting to note some of the state acts which were held, nevertheless, to be valid and not encroachments upon the exclusive power of Congress. The Supreme Court recognized the

[10] (1890) 26 St. at L. 313.
[11] (1891) 140 U. S. 545.
[12] (1898) 170 U. S. 412.
[13] 49 Cong. Rec. 4291; see also article in 22 YALE LAW JOURNAL, 567.
[14] *Cooley v. Board of Wardens* (1851) 12 How. (U. S.) 299.

power of the state to pass a law, even in the absence of federal legislation giving the state such authority, excluding and forbidding the importation into the state of oleomargarine, fraudulently described as butter.[15] The court held this was a valid exercise of the police power of the state to prevent a deception being practiced upon the public.

In the principal case, the court intimated that the Webb-Kenyon Act did not lack uniformity: "So far as uniformity is concerned, there is no question that the Act uniformly applies to the conditions which call its provisions into play—that its provisions apply to all the states so that the question really is a complaint as to the want of uniform existence of things to which the Act applies and not to an absence of uniformity in the Act itself." The court went further and denied that uniformity was an essential requisite to the constitutionality of statutes regulating commerce in intoxicationg liquors. "It is obvious," the court continued, "that the argument seeks to engraft upon the constitution a restriction not found in it, that is, that the power to regulate conferred upon Congress obtains subject to the requirement that regulations enacted shall be uniform throughout the United States."

It is a fundamental principle of constitutional law that the general power conferred upon the legislature to make laws cannot be delegated by that body to any other department or authority.[16] The court distinguished between a delegation of power and a state regulation which derives its force from the will of Congress, and held that the Webb-Kenyon Act falls within the second class. One of the outstanding features of the act is the fact that its violation is not made a federal offense, because it was passed simply to enable the various prohibition states to enforce their prohibition laws in an effective manner. It is the state that punishes the offender and not the federal authorities. The act would, therefore, on first reflection appear to confer power upon the states heretofore not possessed by them. But it must be remembered that the states have always had the power to pass laws prohibiting the sale and manufacture of liquor within the state.[17] The Wilson Act removed one impediment

[15] *Plumley v. Massachusetts* (1894) 155 U. S. 461. The same result was reached in *Crossman v. Lurman* (1904) 192 U. S. 189 in the case of artificially colored coffee beans.

[16] Cooley, *Constitutional Limitations*, p. 163.

[17] *Mugler v. Kansas* (1887) 123 U. S. 623.

that prevented the effective enforcement of state liquor laws; the Webb Act went further and removed another impediment. This can hardly be said to be a delegation of power. The Webb-Kenyon Act differs radically from the Lottery[18] and the Mann "White Slave" Acts,[19] which forbid interstate traffic in lottery tickets and in women, in that these federal statutes inhibit such commerce entirely and make their violation federal offenses. Had Congress exercised its power in reference to intoxicating liquors in the same way, making a violation of the act a federal offense, no question would have been raised as to the act being a delegation of power. The constitutionality of the Webb-Kenyon Act would seem to follow as a logical and necessary development of liquor legislation and judicial decisions in this country.[20]

J. I. S.

POWER OF COURTS TO RENDER DECREES REGARDING THE DEVOLUTION OF STOCK IN A FOREIGN CORPORATION

Charles Baker died in Tennessee, the owner of property in that state, of stock in a Kentucky corporation, and of a claim for surplus profits against the latter corporation. He had no children, but left a widow in Tennessee and a mother in Kentucky. His personal property, if distributable according to the law of Tennessee, would have gone entirely to his widow; if distributable according to Kentucky law, it would have been divided equally between his widow and his mother. His widow, in a Tennessee court, sued the intestate's mother who was asserting a half interest in the personal estate. The mother was summoned by pub-

[18] Act of Congress (1895) 28 U. S. St. at L. 963, c. 191; *Champion v. Ames* (1903) 188 U. S. 320.

[19] Act of Congress (June 25, 1910) 36 U. S. St. at L. 825, c. 395; *Hoke v. United States* (1912) 227 U. S. 308. See also the Lacey Act, sec. 242 of Criminal Code of United States. This act prohibits the transportation in interstate commerce of animals or birds killed in violation of the game laws of the various states. It has been sustained in *Rupert v. United States* (1910) 181 Fed. 87.

[20] Australia, which has a constitution very similar to ours, has a provision therein covering the very situation that the Webb-Kenyon Act provided for, viz.: "All fermented, distilled, or other intoxicating liquors passing into any State or remaining therein for use, consumption, sale, or storage, shall be subject to the laws of the states as if such liquids had been produced in the State." *Annotated Constitution of the Australian Commonwealth* (Quick and Carran) p. 277.